

Rent Relief

Strategies for Small Businesses

Initial Note

- ▶ This presentation is not legal advice, and it does not create an attorney-client relationship.
- ▶ We are happy to share some resources at the end of the presentation, as well as how to get connected to a lawyer for free or low cost to talk about your individual situation.

State of Affairs

- ▶ A database ran by Harvard University tracking the economic fallout of the pandemic reported that as of January 27, 2021, 45.9% of small businesses have closed in DC.
- ▶ Businesses nationwide have been struggling with loss of customers and revenue.
- ▶ Currently, the [Public Health Emergency](#) extends through Wednesday, March 17, 2021.

Overview of Presentation



Mortgage Relief for Landlords



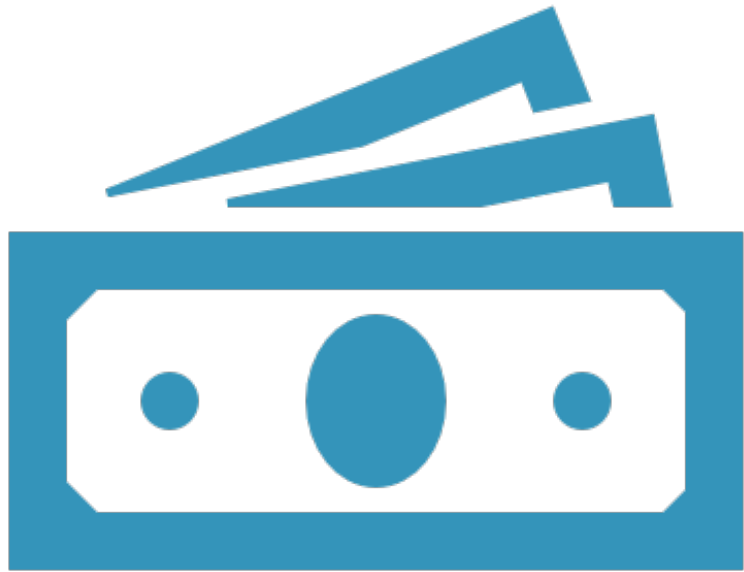
Tenant Payment Plans



Approaching Your Lease



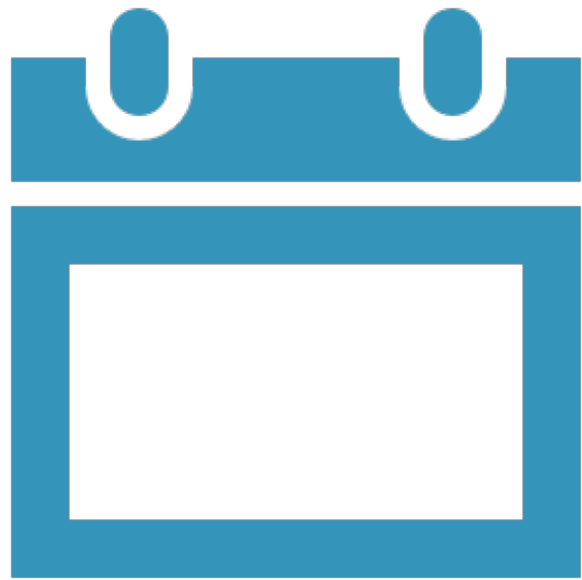
Evictions and Rent Increases



Mortgage Relief for Landlords

Mortgage Relief for Landlords

- ▶ Mortgage Lenders in DC must create a 90-day deferment program and cannot require a lump sum payment or fees from borrowers (Landlords). This means that landlords have the opportunity to have more time to make their mortgage payments.
- ▶ Under this [program](#), Landlords repay the mortgage within a reasonable time or 3 years from the end of the deferment or the maturity date, whichever is sooner.
- ▶ If your Landlord takes advantage of this program, they may potentially be willing to come to an agreement with you to forgive or defer unpaid rent.



Tenant Payment Plans

Tenant Payment Plans

- ▶ During the Public Health Emergency and one year after, eligible tenants may request to set up a payment plan from their landlord.
- ▶ This allows tenants to have more time to pay back any rent that they could not pay all or part of due to the pandemic.
- ▶ Landlords are required to notify tenants of the availability, terms, and application process for this plan.

You are an “Eligible Tenant” if...

- ▶ You notify your landlord with evidence that due to the public health emergency, you cannot pay all or part of your rent. If you are not an “essential business” you have an even stronger argument that you have experienced financial hardship.
- ▶ You are the owner of a business that is not a franchise, OR if it is a franchise, you are a DC resident.
- ▶ You are leasing a commercial retail space, or a commercial space less than 6,500 square feet in size.
- ▶ You are not already receiving rent relief under the Landlord’s mortgage relief program.

Plan Details

- ▶ You have at least one year to make payments, unless you want a shorter term.
- ▶ This plan will cover everything due under the lease.
- ▶ You will make equal monthly payments on schedule, and there will be no fees, interest, or lump sum payments.
- ▶ You keep all your rights under your lease.

Plan Details

- ▶ Your Landlord may not penalize you or evict you based on past inability to make rent once you are on the plan, AS LONG AS you follow the plan.
- ▶ Your Landlord may not report to a credit reporting agency that you are on a payment plan or how much you are paying. This means it cannot affect your credit or future security deposits.
- ▶ This plan should be a written agreement.
- ▶ If your Landlord refuses to offer you a plan, you may complain to the [Department of Consumer Regulatory Affairs](#).



Approaching Your Lease

Negotiating with Your Landlord

- ▶ **Be Informed.** What do tenants in your area pay for rent? Is your Landlord currently making mortgage payments? The more you know, the better your position.
- ▶ **Meet in the Middle.** Find out what your Landlord is looking for and see what you can give them to get to a good arrangement.
- ▶ **Consider Timing.** It may be beneficial to ask for flexibility before you are behind on payments.

Negotiating with your Landlord

A Tenant might agree to:

- ▶ Move out after a certain period of time
- ▶ Pay back rent over a period of time
- ▶ Pay rent on time for a certain period
- ▶ Behave in a certain way (for example, not having too much trash in the unit) for a certain period of time
- ▶ Make sure unauthorized occupants leave the unit

A Landlord might agree to:

- ▶ Give the tenant a neutral reference
- ▶ Not raise the rent for a certain period of time
- ▶ Not collect some or all of the back rent owed
- ▶ Make repairs by a certain date

“Force Majeure” Clauses

- ▶ Force Majeure, also called “Act of God,” is a clause in many leases where an event outside of your control shuts down your business.
- ▶ If your lease says that “restrictive governmental laws or regulations” like those in the Public Health Emergency could be such an event, you may be able to avoid paying rent without defaulting on your lease.
- ▶ Double check! Your lease may have such a clause but still require you to pay rent.

Who signed your lease?

- ▶ Did you sign as yourself (personally liable), or as your company?
- ▶ Did you guarantee the lease as an individual?
- ▶ If the answer is yes, your personal assets connected with or separate from the business could be at risk if you break your lease.

Subletting and Assignment as an Exit Strategy

- ▶ Look for your ability to assign or sublet your space, if that would be a good option for you.
 - ▶ Does the Landlord have to consent to assignment or sublease?
 - ▶ Does it require continuation of the same type of business?
 - ▶ Sublease: You are still on the hook if your sublessee fails to pay rent.
 - ▶ Assignment: Lease releases you from responsibility for the rent.

Terminating your Lease

- ▶ Check your Lease for language about termination. You may be able to terminate your lease for a negotiated fee.
- ▶ If it isn't in your lease, but your Landlord agrees to terminate anyway, get the agreement and surrender in writing, so that your Landlord cannot accelerate rent.

If You Abandon Your Lease

- ▶ Your Landlord has no duty to find another tenant, so you are liable for the whole amount unpaid on your lease, unless your Landlord decides to re-rent to another tenant.



Evictions and Rent Increases

Eviction Prohibition

- ▶ Your landlord may not evict you during the public health emergency, nor for 60 days after the end of the public health emergency. For any reason.
- ▶ After the PHE ends, if a court orders an eviction because you did not pay rent, you can “redeem” your lease by paying back the rent, fees, and court costs within three days of the order.
- ▶ Always prohibited: changing the locks without taking you to court.

Rent Increase Prohibition

- ▶ Rent increases are prohibited for commercial retail tenants or other commercial tenants if less than 6500 sq feet during the public health emergency and 30 days after.
- ▶ If your landlord previously gave you a notice that they were going to increase the rent before the pandemic, it is no longer effective, and they need to give you 30 day notice again once the public health emergency ends.

Summary of Timeline of Protections under Public Health Emergency

- ▶ March 17 + 60 days: Eviction prohibited.
- ▶ March 17 + 30 days: No rent increase. Landlord must issue new 30-day notice after March 17 for rent increase agreed to in lease before or during the PHE.
- ▶ March 17 + 1 year: Landlord must honor payment plan.



▶ Other Resources

Other Resources

- ▶ [Federal Rent Assistance Program](#) will come soon after the federal government finalizes the rules. Commercial Tenants are eligible for assistance if they meet other requirements.
- ▶ [Federal Disaster Loans for Businesses](#) the Small Business Administration's application is open for qualified entities.
- ▶ [Paycheck Protection Program.](#)
- ▶ [Recovery for Businesses in DC](#) Website has ongoing opportunities
- ▶ [DC Small Business Development Center](#)
- ▶ [Free Legal Help](#) from the DC Bar Pro Bono Center
- ▶ [Form](#) to seek Free Legal Help with your Commercial Lease
- ▶ [DC Refers](#)